

ASSEMBLY BILL

No. 182

Introduced by Assembly Member Harman

January 27, 2003

An act to amend Sections 681.030, 703.140, 704.010, 704.030, 704.040, 704.060, 704.080, 704.090, and 704.100 of, and to add Section 703.150 to, the Code of Civil Procedure, and to amend Section 17409 of the Welfare and Institutions Code, relating to exempt property.

LEGISLATIVE COUNSEL'S DIGEST

AB 182, as introduced, Harman. Exempt property: evaluation.

(1) Existing law sets the maximum value of various forms of real and personal property that is exempt from the enforcement of judgments in bankruptcy proceedings, as specified. Existing law further provides that certain, alternative exemptions, available at the debtor's option, shall be increased in accordance with periodic adjustments of similar exemptions provided under federal bankruptcy laws.

This bill would delete the latter provision for periodic adjustments of certain exempt property, and, instead, would provide for the Judicial Council, by rule of court, to determine on April 1, 2004, and at each 3-year interval ending on April 1 thereafter, and to adjust the amount of the exemptions applicable to that exempt property based on the change in the annual California Consumer Price Index for All Urban Consumers, and to prepare conforming forms for those adjustments. The bill would also increase the statutory value of various forms of real and personal property that are exempt under alternative provisions.

(2) Existing law sets the value of various forms of real and personal property exempt from provisions governing transfers and grants, and provisions governing execution on claims, with respect to property

acquired by persons for the support of whom public moneys have been expended, as specified.

This bill would increase the statutory value of specified forms of real and personal property that are exempt under the latter provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 681.030 of the Code of Civil Procedure
2 is amended to read:

3 681.030. (a) The Judicial Council may provide by rule for the
4 practice and procedure in proceedings under this title.

5 (b) The Judicial Council may prescribe the form of the
6 applications, notices, orders, writs, and other papers to be used
7 under this title. The Judicial Council may prescribe forms in
8 languages other than English. The timely completion and return of
9 a Judicial Council form prescribed in a language other than
10 English has the same force and effect as the timely completion and
11 return of an English language form.

12 (c) The Judicial Council shall prepare a form containing both
13 of the following:

14 (1) A list of each of the federal and this state's exemptions from
15 enforcement of a money judgment against a natural person.

16 (2) A citation to the relevant statute of the United States or this
17 state which creates each of the exemptions.

18 (3) *Beginning with the first adjustment, pursuant to Section*
19 *703.150, of exemption amounts in Article 3 (commencing with*
20 *Section 704.010), a list of the amounts of exemptions that have*
21 *been adjusted, together with a statement of the date of the next*
22 *scheduled adjustment.*

23 SEC. 2. Section 703.140 of the Code of Civil Procedure is
24 amended to read:

25 703.140. (a) In a case under Title 11 of the United States
26 Code, all of the exemptions provided by this chapter, including the
27 homestead exemption, other than the provisions of subdivision (b)
28 are applicable regardless of whether there is a money judgment
29 against the debtor or whether a money judgment is being enforced
30 by execution sale or any other procedure, but the exemptions



provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:

(1) If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(2) If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(b) The following exemptions may be elected as provided in subdivision (a):

(1) The debtor's aggregate interest, not to exceed seventeen thousand four hundred twenty-five dollars (\$17,425) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed two thousand seven hundred seventy-five dollars (\$2,775) in value, in one motor vehicle.

(3) The debtor's interest, not to exceed four hundred fifty dollars (\$450) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed one thousand one hundred fifty dollars (\$1,150) in value, in jewelry held

1 primarily for the personal, family, or household use of the debtor
2 or a dependent of the debtor.

3 (5) The debtor's aggregate interest, not to exceed in value nine
4 hundred twenty-five dollars (\$925) plus any unused amount of the
5 exemption provided under paragraph (1), in any property.

6 (6) The debtor's aggregate interest, not to exceed one thousand
7 seven hundred fifty dollars (\$1,750) in value, in any implements,
8 professional books, or tools of the trade of the debtor or the trade
9 of a dependent of the debtor.

10 (7) Any unmaturing life insurance contract owned by the debtor,
11 other than a credit life insurance contract.

12 (8) The debtor's aggregate interest, not to exceed in value nine
13 thousand three hundred dollars (\$9,300), in any accrued dividend
14 or interest under, or loan value of, any unmaturing life insurance
15 contract owned by the debtor under which the insured is the debtor
16 or an individual of whom the debtor is a dependent.

17 (9) Professionally prescribed health aids for the debtor or a
18 dependent of the debtor.

19 (10) The debtor's right to receive any of the following:

20 (A) A social security benefit, unemployment compensation, or
21 a local public assistance benefit.

22 (B) A veterans' benefit.

23 (C) A disability, illness, or unemployment benefit.

24 (D) Alimony, support, or separate maintenance, to the extent
25 reasonably necessary for the support of the debtor and any
26 dependent of the debtor.

27 (E) A payment under a stock bonus, pension, profit-sharing,
28 annuity, or similar plan or contract on account of illness, disability,
29 death, age, or length of service, to the extent reasonably necessary
30 for the support of the debtor and any dependent of the debtor,
31 unless all of the following apply:

32 (i) That plan or contract was established by or under the
33 auspices of an insider that employed the debtor at the time the
34 debtor's rights under the plan or contract arose.

35 (ii) The payment is on account of age or length of service.

36 (iii) That plan or contract does not qualify under Section
37 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code
38 of 1986.

39 (11) The debtor's right to receive, or property that is traceable
40 to, any of the following:

1 (A) An award under a crime victim's reparation law.

2 (B) A payment on account of the wrongful death of an
3 individual of whom the debtor was a dependent, to the extent
4 reasonably necessary for the support of the debtor and any
5 dependent of the debtor.

6 (C) A payment under a life insurance contract that insured the
7 life of an individual of whom the debtor was a dependent on the
8 date of that individual's death, to the extent reasonably necessary
9 for the support of the debtor and any dependent of the debtor.

10 (D) A payment, not to exceed seventeen thousand four hundred
11 twenty-five dollars (\$17,425), on account of personal bodily
12 injury, not including pain and suffering or compensation for actual
13 pecuniary loss, of the debtor or an individual of whom the debtor
14 is a dependent.

15 (E) A payment in compensation of loss of future earnings of the
16 debtor or an individual of whom the debtor is or was a dependent,
17 to the extent reasonably necessary for the support of the debtor and
18 any dependent of the debtor.

19 ~~(e) Each dollar amount in effect under this section shall be~~
20 ~~increased in accordance with the periodic adjustments of similar~~
21 ~~exemptions provided under federal bankruptcy laws.~~

22 SEC. 3. Section 703.150 is added to the Code of Civil
23 Procedure, to read:

24 703.150. (a) On April 1, 2004, and at each three-year interval
25 ending on April 1 thereafter, the dollar amounts of exemptions
26 provided in subdivision (b) of Section 703.140 in effect
27 immediately before that date shall be adjusted as provided in
28 subdivision (c).

29 (b) On April 1, 2007, and at each three-year interval ending on
30 April 1 thereafter, the dollar amounts of exemptions provided in
31 Article 3 (commencing with Section 704.010) in effect
32 immediately before that date shall be adjusted as provided in
33 subdivision (c).

34 (c) The Judicial Council by rule shall determine the amount of
35 the adjustment based on the change in the annual California
36 Consumer Price Index for All Urban Consumers, published by the
37 Department of Industrial Relations, Division of Labor Statistics,
38 for the most recent three-year period ending on December 31
39 preceding the adjustment, with each adjusted amount rounded to
40 the nearest twenty-five dollars (\$25).

(d) Adjustments made under subdivision (a) do not apply with respect to cases commenced before the date of the adjustment, subject to any contrary rule applicable under the federal Bankruptcy Code. The applicability of adjustments made under subdivision (b) is governed by Section 703.050.

SEC. 4. Section 704.010 of the Code of Civil Procedure is amended to read:

704.010. (a) Any combination of the following is exempt in the amount of ~~one thousand nine hundred dollars (\$1,900)~~ *two thousand three hundred dollars (\$2,300)*:

(1) The aggregate equity in motor vehicles.

(2) The proceeds of an execution sale of a motor vehicle.

(3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

(b) Proceeds exempt under subdivision (a) are exempt for a period of 90 days after the time the proceeds are actually received by the judgment debtor.

(c) For the purpose of determining the equity, the fair market value of a motor vehicle shall be determined by reference to used car price guides customarily used by California automobile dealers unless the motor vehicle is not listed in such price guides.

(d) If the judgment debtor has only one motor vehicle and it is sold at an execution sale, the proceeds of the execution sale are exempt in the amount of ~~one thousand nine hundred dollars (\$1,900)~~ *two thousand three hundred dollars (\$2,300)* without making a claim. The levying officer shall consult and may rely upon the records of the Department of Motor Vehicles in determining whether the judgment debtor has only one motor vehicle. In the case covered by this subdivision, the exemption provided by subdivision (a) is not available.

SEC. 5. Section 704.030 of the Code of Civil Procedure is amended to read:

704.030. Material that in good faith is about to be applied to the repair or improvement of a residence is exempt if the equity in the material does not exceed ~~two thousand dollars (\$2,000)~~ *two thousand four hundred twenty-five dollars (\$2,425)* in the following cases:

(a) If purchased in good faith for use in the repair or improvement of the judgment debtor's principal place of residence.

(b) Where the judgment debtor and the judgment debtor's spouse live separate and apart, if purchased in good faith for use in the repair or improvement of the spouse's principal place of residence.

SEC. 6. Section 704.040 of the Code of Civil Procedure is amended to read:

704.040. Jewelry, heirlooms, and works of art are exempt to the extent that the aggregate equity therein does not exceed ~~five thousand dollars (\$5,000)~~ *six thousand seventy-five dollars (\$6,075)*.

SEC. 7. Section 704.060 of the Code of Civil Procedure is amended to read:

704.060. (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:

(1) ~~Five thousand dollars (\$5,000)~~ *Six thousand seventy-five dollars (\$6,075)*, if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.

(2) ~~Five thousand dollars (\$5,000)~~ *Six thousand seventy-five dollars (\$6,075)*, if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.

(3) ~~Ten thousand dollars (\$10,000)~~ *Twice the amount of the exemption provided in paragraph (1)*, if reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exemptions provided in paragraphs (1) and (2) are not available.

(b) If property described in subdivision (a) is sold at an execution sale, or if it has been lost, damaged, or destroyed, the proceeds of the execution sale or of insurance or other indemnification are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor or the judgment debtor's spouse. The amount exempt under this subdivision is the amount specified in subdivision (a) that applies to the particular case less the aggregate equity of any other

1 property to which the exemption provided by subdivision (a) for
2 the particular case has been applied.

3 (c) Notwithstanding subdivision (a), a motor vehicle is not
4 exempt under subdivision (a) if there is a motor vehicle exempt
5 under Section 704.010 which is reasonably adequate for use in the
6 trade, business, or profession for which the exemption is claimed
7 under this section.

8 (d) Notwithstanding subdivisions (a) and (b):

9 (1) The amount of the exemption for a commercial motor
10 vehicle under paragraph (1) or (2) of subdivision (a) is limited to
11 four thousand ~~dollars (\$4,000)~~ *eight hundred fifty dollars*
12 *(\$4,850)*.

13 (2) The amount of the exemption for a commercial motor
14 vehicle under paragraph (3) of subdivision (a) is limited to ~~eight~~
15 ~~thousand dollars (\$8,000)~~ *twice the amount of the exemption*
16 *provided in paragraph (1) of this subdivision*.

17 SEC. 8. Section 704.080 of the Code of Civil Procedure is
18 amended to read:

19 704.080. (a) For the purposes of this section:

20 (1) "Deposit account" means a deposit account in which
21 payments of public benefits or social security benefits are directly
22 deposited by the government or its agent.

23 (2) "Social security benefits" means payments authorized by
24 the Social Security Administration for regular retirement and
25 survivors' benefits, supplemental security income benefits, coal
26 miners' health benefits, and disability insurance benefits. "Public
27 benefits" means aid payments authorized pursuant to subdivision
28 (a) of Section 11450 of the Welfare and Institutions Code,
29 payments for supportive services as described in Section 11323.2
30 of the Welfare and Institutions Code, and general assistance
31 payments made pursuant to Section 17000.5 of the Welfare and
32 Institutions Code.

33 (b) A deposit account is exempt without making a claim in the
34 following amount:

35 (1) One thousand ~~dollars (\$1,000)~~ *two hundred twenty-five*
36 *dollars (\$1,225)* where one depositor is the designated payee of the
37 directly deposited public benefits payments, ~~and two thousand~~
38 ~~dollars (\$2,000)~~.

1 (2) *Two thousand four hundred twenty-five dollars (\$2,425)*
2 where one depositor is the designated payee of directly deposited
3 social security payments.

4 ~~(2) *One thousand five hundred dollars (\$1,500)*~~

5 (3) *One thousand eight hundred twenty-five dollars (\$1,825)*
6 where two or more depositors are the designated payees of the
7 directly deposited public benefits payments, unless those
8 depositors are joint payees of directly deposited payments that
9 represent a benefit to only one of the depositors, in which case the
10 ~~exempt amount is one thousand dollars (\$1,000). Three thousand~~
11 ~~dollars (\$3,000) exemption under paragraph (1) applies.~~

12 (4) *Three thousand six hundred fifty dollars (\$3,650)* where
13 two or more depositors are the designated payees of directly
14 deposited social security payments, unless those depositors are
15 joint payees of directly deposited payments that represent a benefit
16 to only one of the depositors, in which case the ~~exempt amount is~~
17 ~~two thousand dollars (\$2,000) exemption under paragraph (2)~~
18 ~~applies.~~

19 (c) The amount of a deposit account that exceeds the exemption
20 provided in subdivision (b) is exempt to the extent that it consists
21 of payments of public benefits or social security benefits.

22 (d) Notwithstanding Article 5 (commencing with Section
23 701.010) of Chapter 3, when a deposit account is levied upon or
24 otherwise sought to be subjected to the enforcement of a money
25 judgment, the financial institution that holds the deposit account
26 shall either place the amount that exceeds the exemption provided
27 in subdivision (b) in a suspense account or otherwise prohibit
28 withdrawal of that amount pending notification of the failure of the
29 judgment creditor to file the affidavit required by this section or
30 the judicial determination of the exempt status of the amount.
31 Within 10 business days after the levy, the financial institution
32 shall provide the levying officer with a written notice stating (1)
33 that the deposit account is one in which payments of public
34 benefits or social security benefits are directly deposited by the
35 government or its agent and (2) the balance of the deposit account
36 that exceeds the exemption provided by subdivision (b). Promptly
37 upon receipt of the notice, the levying officer shall serve the notice
38 on the judgment creditor. Service shall be made personally or by
39 mail.

(e) Notwithstanding the procedure prescribed in Article 2 (commencing with Section 703.510), whether there is an amount exempt under subdivision (c) shall be determined as follows:

(1) Within five days after the levying officer serves the notice on the judgment creditor under subdivision (d), a judgment creditor who desires to claim that the amount is not exempt shall file with the court an affidavit alleging that the amount is not exempt and file a copy with the levying officer. The affidavit shall be in the form of the notice of opposition provided by Section 703.560, and a hearing shall be set and held, and notice given, as provided by Sections 703.570 and 703.580. For the purpose of this subdivision, the “notice of opposition to the claim of exemption” in Sections 703.570 and 703.580 means the affidavit under this subdivision.

(2) If the judgment creditor does not file the affidavit with the levying officer and give notice of hearing pursuant to Section 703.570 within the time provided in paragraph (1), the levying officer shall release the deposit account and shall notify the financial institution.

(3) The affidavit constitutes the pleading of the judgment creditor, subject to the power of the court to permit amendments in the interest of justice. The affidavit is deemed controverted and no counteraffidavit is required.

(4) At a hearing under this subdivision, the judgment debtor has the burden of proving that the excess amount is exempt.

(5) At the conclusion of the hearing, the court by order shall determine whether or not the amount of the deposit account is exempt pursuant to subdivision (c) in whole or in part and shall make an appropriate order for its prompt disposition. No findings are required in a proceeding under this subdivision.

(6) Upon determining the exemption claim for the deposit account under subdivision (c), the court shall immediately transmit a certified copy of the order of the court to the financial institution and to the levying officer. If the order determines that all or part of the excess is exempt under subdivision (c), with respect to the amount of the excess which is exempt, the financial institution shall transfer the exempt excess from the suspense account or otherwise release any restrictions on its withdrawal by the judgment debtor. The transfer or release shall be effected

1 within three business days of the receipt of the certified copy of the
2 court order by the financial institution.

3 (f) If the judgment debtor claims that a portion of the amount
4 is exempt other than pursuant to subdivision (c), the claim of
5 exemption shall be made pursuant to Article 2 (commencing with
6 Section 703.510). If the judgment debtor also opposes the
7 judgment creditor's affidavit regarding an amount exempt
8 pursuant to subdivision (c), both exemptions shall be determined
9 at the same hearing, provided the judgment debtor has complied
10 with Article 2 (commencing with Section 703.510).

11 SEC. 9. Section 704.090 of the Code of Civil Procedure is
12 amended to read:

13 704.090. (a) The funds of a judgment debtor confined in a
14 prison or facility under the jurisdiction of the Department of
15 Corrections or the Department of the Youth Authority or confined
16 in any county or city jail, road camp, industrial farm, or other local
17 correctional facility, held in trust for or to the credit of the
18 judgment debtor, in an inmate's trust account or similar account by
19 the state, county, or city, or any agency thereof, are exempt without
20 making a claim in the amount of one thousand dollars ~~(\$1,000)~~ *two*
21 *hundred twenty-five dollars (\$1,225)*. If the judgment debtor is
22 married, each spouse is entitled to a separate exemption under this
23 section or the spouses may combine their exemptions.

24 (b) Notwithstanding subdivision (a), if the judgment is for a
25 restitution fine or order imposed pursuant to subdivision (a) of
26 Section 13967 of the Government Code, as operative on or before
27 September 28, 1994, or Section 1203.04 of the Penal Code, as
28 operative on or before August 2, 1995, or Section 1202.4 of the
29 Penal Code, the funds held in trust for, or to the credit of, a
30 judgment debtor described in subdivision (a) are exempt in the
31 amount of three hundred dollars (\$300) without making a claim.
32 *The exemption provided in this subdivision is not subject to*
33 *adjustment under Section 703.150.*

34 SEC. 10. Section 704.100 of the Code of Civil Procedure is
35 amended to read:

36 704.100. (a) Unmatured life insurance policies (including
37 endowment and annuity policies), but not the loan value of such
38 policies, are exempt without making a claim.

39 (b) The aggregate loan value of unmaturred life insurance
40 policies (including endowment and annuity policies) is subject to

1 the enforcement of a money judgment but is exempt in the amount
2 of ~~eight thousand dollars (\$8,000)~~ *nine thousand seven hundred*
3 *dollars (\$9,700)*. If the judgment debtor is married, each spouse
4 is entitled to a separate exemption under this subdivision, and the
5 exemptions of the spouses may be combined, regardless of
6 whether the policies belong to either or both spouses and
7 regardless of whether the spouse of the judgment debtor is also a
8 judgment debtor under the judgment. The exemption provided by
9 this subdivision shall be first applied to policies other than the
10 policy before the court and then, if the exemption is not exhausted,
11 to the policy before the court.

12 (c) Benefits from matured life insurance policies (including
13 endowment and annuity policies) are exempt to the extent
14 reasonably necessary for the support of the judgment debtor and
15 the spouse and dependents of the judgment debtor.

16 SEC. 11. Section 17409 of the Welfare and Institutions Code
17 is amended to read:

18 17409. There shall be exempt from the transfers and grants
19 authorized by Section 17109 and from execution on claims under
20 Section 17403 against property acquired by persons for the
21 support of whom public moneys have been expended all of the
22 following property:

23 (a) Cash ~~to the amount of fifty dollars (\$50)~~ *not exceeding one*
24 *hundred dollars (\$100)*.

25 (b) Personal effects and household furniture ~~to the value of five~~
26 ~~hundred dollars (\$500)~~ *not exceeding one thousand dollars*
27 *(\$1,000) in value*.

28 (c) An interment space, crypt, or niche intended for the
29 interment of the applicant or recipient of aid.

30 (d) Funds placed in trust for funeral or burial expenses ~~to the~~
31 ~~extent that such funds do not exceed the sum of five hundred~~
32 ~~dollars (\$500)~~ *not exceeding one thousand dollars (\$1,000)*.

33 (e) Insurance policies having an actual cash surrender value ~~of~~
34 ~~not to exceed five hundred dollars (\$500)~~ *not exceeding one*
35 *thousand dollars (\$1,000)*.

36 (f) Real or personal property of a recipient of public assistance,
37 with respect to aid or county hospital care ~~granted after May 21,~~
38 ~~1963~~.

39 (g) For a period of six months from the date of receipt, the
40 compensation received from a public entity which acquires for a

1 public use a dwelling actually owned and occupied by the
2 recipient. Such compensation shall be exempt in the amount, over
3 and above all liens and encumbrances, provided by Section
4 704.730 of the Code of Civil Procedure.

5 (h) Relocation benefits shall be exempt as provided by Section
6 704.180 of the Code of Civil Procedure.

7 No county shall withhold emergency medical or hospital care
8 from any person pending the person giving security for
9 reimbursement to the county for the care or hospitalization to be
10 provided to the person.

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